



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/587,154

05/01/2007

Mattias Johansson

65366-412

4974

7590

03/24/2009

Samuel J Haidle

Howard Howard Attorneys

Suite 101

39400 Woodward Avenue

Bloomfield Hills, MI 48304-5151

EXAMINER

LUONG, VINH

ART UNIT

PAPER NUMBER

3656

MAIL DATE

DELIVERY MODE

03/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,154	Applicant(s) JOHANSSON, MATTIAS	
	Examiner Vinh T. Luong	Art Unit 3656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009 and 03 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 12, 13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 12, 13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3656

1. The amendments filed on January 13, 2009 and November 3, 2008 have been entered.
2. Applicant's election of the species of FIGS. 1-3 in the reply filed on March 12, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).
3. Claims 2-5 and 23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 12, 2008.
4. The drawings were received on July 24, 2006. These drawings are accepted by the Examiner.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether the term that appears twice, such as, "a locking device" in claim 20/15/12 refers to the same or different things. See double inclusion in MPEP 2173.05(o).

7. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller et al. (US 2002/0007693 A1 cited in International Search Report of priority Application PCT/SE 2005/000076).

Claim 12

Art Unit: 3656

Mueller teaches a pedal assembly (1) for a vehicle to control a vehicular function, said assembly comprising:

a bracket (5) for attachment to the vehicle,

a shaft (6) coupled to said bracket (5),

a pedal arm (2) pivotally supported about said shaft (6) in said bracket (5) for moving between rest and applied positions,

an operating device (7) secured to said pedal arm (2) a distance from said shaft (6) for activation of the vehicular function during movement of said pedal arm (2) between the rest and applied positions, and

a safety device 1 (*id.* paragraph [0052]) coupling said shaft (6) to said bracket (5) and *movable* within said bracket (5) between a normal position (FIGS. 1 and 3, *id.* paragraphs [0030] and [0032]) retaining said shaft (6) in a first location relative to said bracket (5) and a safety position (FIGS. 4 and 5) displacing said shaft (6) to a second location relative to said bracket (5) different from said first location with said pedal arm (2) remaining pivotally supported about said shaft (6) for maintaining movement of said pedal arm (2) between the rest and applied positions and for at least partially maintaining functionality of said operating device (7) when said safety device (1) is in said safety position; and

a locking device (11) movably disposed relative to said bracket (5) for securing said safety device (1) in said normal position and for permitting said safety device (1) to move into said safety position. *Ibid.* Claims 1-16.

Claim 13

Art Unit: 3656

Said pedal arm (2) includes an upper region mounted to said shaft (6) and a lower region having a footplate (4) with said footplate (4) moving toward said bracket (5) when said safety device (1) moves from said normal position to said safety position.

8. Claims 12 and 15-19, and claim 20, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuma (US 2003/0019319 A1 cited by International Searching Authority in priority Application PCT/SE 2005/000076).

Claim 12

Mizuma teaches a pedal assembly (1) for a vehicle to control a vehicular function, said assembly comprising:

a bracket (2) for attachment to the vehicle,

a shaft (6) coupled to said bracket (2),

a pedal arm (8) pivotally supported about said shaft (6) in said bracket (2) for moving between rest and applied positions,

an operating device (35) secured to said pedal arm (8) a distance from said shaft (6) for activation of the vehicular function during movement of said pedal arm (8) between the rest and applied positions, and

a safety device (3) coupling said shaft (6) to said bracket (2) and *movable* within said bracket (2) between a normal position (FIG. 3A) retaining said shaft (6) in a first location relative to said bracket (2) and a safety position (FIG. 4) displacing said shaft (6) to a second location relative to said bracket (2) different from said first location with said pedal arm (8) remaining pivotally supported about said shaft (6) for maintaining movement of said pedal arm

Art Unit: 3656

(8) between the rest and applied positions and for at least partially maintaining functionality of said operating device (35) when said safety device (3) is in said safety position; and

a locking device (9) movably disposed relative to said bracket (2) for securing said safety device (3) in said normal position and for permitting said safety device (3) to move into said safety position. *Id.* Claims 1-16.

Claim 15

Said safety (3) device includes fulcrums (20, FIG. 1) movably disposed about a second horizontal axis (4).

Claim 16

Said fulcrums (20) are mounted between said bracket (2) and said shaft (6) with said fulcrums (20) supporting said shaft (6) within said bracket (2).

Claim 17

Said fulcrums (20) are capable of pivoting relative to said bracket (2) to said safety position about said second horizontal axis (4).

Claim 18

Said second horizontal axis (4) is disposed at said bracket (2) and is substantially parallel with said shaft (6).

Claim 19

Said shaft (6) pivots relative to said fulcrums (20) when said fulcrums (20) pivot relative to said bracket (2). In addition, it is well settled that the “wherein” or “whereby” clause that merely states the inherent results of limitations in the claim adds nothing to the claim’s patentability or substance. *Texas Instruments Inc. v. International Trade Commission*, 26

Art Unit: 3656

USPQ2d 1018 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); and *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57 USPQ2d 1747 (Fed. Cir. 2001).

Claim 20

The locking device (9) is movably mounted to said bracket (2) and selectively engaging said fulcrums (20) for securing said fulcrums (20) in said normal position and for permitting said fulcrums (20) to move into said safety position. *Id.* paragraph [0016] *et seq.*

9. Claim 22, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuma (US 2003/0019319 A1) in view of Mueller et al. (US 2002/0007693 A1).

Mizuma teaches the invention as claimed except the sensor.

Mueller teaches the well known sensor for triggering the locking device 11 to move relative to the bracket 5. Mueller, paragraph [0054].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple the sensor to Mizuma's locking device for triggering Mizuma's locking device to move relative to Mizuma's bracket as taught or suggested by Mueller. The modification of Mizuma's pedal assembly by coupling the sensor to the locking device would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement." *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

10. Claim 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3656

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Tokumo et al. (safety device 5), Jasseron (safety device 36), Cordero (safety device 3), Hayashi (safety device 6), Podkopayev (safety device 35), Park (safety device 7), Edgar (safety device 19), and Kastner (safety device 4).

12. Applicant's arguments filed January 13, 2009 and November 3, 2008 have been fully considered but they are not persuasive.

OBJECTION

The objections to the abstract and drawings are withdrawn in view of Applicant's amendments and remarks.

35 USC 112, SECOND PARAGRAPH

The previous rejection under 35 USC 112 is withdrawn in view of Applicant's remarks. However, Applicant's amendments to the claims necessitate new rejection under 35 USC 112 as seen above.

ART REJECTION

Mueller et al.

In the amendment filed on November 3, 2008, Applicant contended:

Specifically, the Examiner identifies the safety device of Mueller et al. as reference numeral "1" and the locking device as reference numeral "11". These are actually the same part. As clearly set forth in the Figures and paragraph numbers 0052 and 0062 of Mueller et al., the safety device 1 is the fixing 11. The terms 'safety device' and 'fixing' are also used interchangeably in paragraphs 0041, 0042, 0050 and 0051 in Mueller et al.

The claimed invention, however, sets forth *two separate and distinct components as the safety device and the locking device*. In the preferred embodiment of claims 1-3, which is not intended to limit the scope of claim 12, *the safety device is shown*

Art Unit: 3656

as a pair of fulcrums 7, 8 and the locking device is shown as a pair of arms 14, 15 with a plate 16 extending between the arms. The more specific features of the safety device shown in Figures 1-3 are set forth in claims 15-19 and the more specific features of the locking device shown in Figures 1-3 are set forth in claims 20-22. (Emphasis added).

As noted in MPEP 2111, during patent examination, *claims are given their broadest reasonable interpretation consistent with the specification*. It is proper to use the specification to interpret what the applicant meant by a word or phrase recited in the claim. However, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); and *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989).

Moreover, our reviewing court in *Phillips* decision reiterated that “[i]t is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 [75 USPQ2d 1321] (Fed. Cir. 2005) (*en banc*) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 [72 USPQ2d 1001] (Fed. Cir. 2004)). The claim terms “are generally given their ordinary and customary meaning.” *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 [39 USPQ2d 1573] (Fed. Cir. 1996)). “The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation.” *Id.* “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* “***In examining***

Art Unit: 3656

the specification for proper context, however, the court will not at any time import limitations from the specification into the claims.” CollegeNet, Inc. v. ApplyYourself, Inc., 418 F.3d 1225, 1231 [75 USPQ2d 1733] (Fed. Cir. 2005) (citing *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1326 [63 USPQ2d 1374] (Fed. Cir. 2002)).

In the instant case, the Examiner respectfully submits that Applicant's arguments apparently fail from the outset since they are not based on the limitations appearing in claims 12 and 13. *In re Self*, 213 USPQ 1, 5 (CCPA 1982). A review of claims 12 and 13 reveals that these claims do not require the safety device and the locking device to be separate and distinct components. Applicant's assertion that “[t]he claimed invention, however, sets forth *two separate and distinct components as the safety device and the locking device*” appears to be unsupported by substantial evidence presented in claims 12 and 13. In fact, the term, such as, “separate” does not appear in claims 12 and 13. To the extent that *the safety device is shown as a pair of fulcrums 7, 8 and the locking device is shown as a pair of arms 14, 15 with a plate 16 extending between the arms*, however, the fulcrums 7, 8 are set forth in claims 15-19 and the arms 14, 15 are set forth in claim 21, not claims 12 and 13. Simply put, claims 12 and 13 do not preclude the safety device and the locking device integrally formed as one piece, *a fortiori*, Mueller's one-piece formed safety device 1 and locking device 11 “reads on” the claimed devices in claims 12 and 13. See *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983)(anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference “teach” what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, “*read on*” something disclosed in the reference, *i.e.*, all limitations of the claim are found in reference, or are “*fully met*” by it).

Art Unit: 3656

Mizuma

Applicant's arguments did not address the rejection based on Mizuma as seen on page 10 of the amendment filed on November 3, 2008 and January 13, 2009. Applicant's silence implies assent, *a fortiori*, the instant rejection is deemed to be proper and reiterated. *Cf.*, (Unpublished) *Ex parte Knapton*, 67 USPQ2d 1059 (Bd. Pat. App. & Int. 2002).

CONCLUSION

Accordingly, Applicant's solicitation for allowance of the instant case is respectfully declined.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

Art Unit: 3656

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656